

Cicero the advocate: court-room metamorphosis

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Cicero's elevation to the highest rung of the political ladder at Rome, the consulship, in 63 B.C. was remarkable for at least two reasons. Firstly, he came from a non-senatorial family and was the first man of his background to achieve such high office for over thirty years. But more remarkable still is the fact that Cicero achieved this not through any military brilliance but largely because of his reputation as an orator. For what made Cicero was the system of advocacy, the pleading of a client's case in a court of law, whether it be defending a man accused of murder such as Cluentius in 66 B.C. or prosecuting a corrupt governor on behalf of wronged provincials as he had Verres in 70 B.C.

Pleading in person: pleading as patron

The Greek legal system expected the defendant or prosecutor to plead their case in person. This led to the system of logography, whereby those involved in lawsuits could approach experts such as Lysias to produce a speech for his client to deliver in the court. Advocacy was permitted but it is probable that an advocate spoke only after the person actually involved had opened his case. Moreover it appears that the advocate in question was advised to make clear to the court that he had good reason to be appearing, whether that be friendship with the person he was representing or enmity with the opponent. The prime concern seems to have been that the advocate was not appearing for mercenary reasons since that could be seen to strike in a visible way at the very heart of the democratic system if the richer man were to have access to assistance that was not available to the poor.

At Rome, although again the advocate was not strictly allowed to appear for pay, the idea that one man might speak on another's behalf was accepted practice. It is generally agreed that the origins of this custom lay in the traditional relationship within Roman society of patron and client: the lower status citizen, the *cliens*, offered his public support to the more powerful, the *patronus*, who in turn offered the benefits of his wealth and power to the client. He might intervene on his behalf whenever it was necessary and this would naturally include appearances for him in the law-courts. That this was the origin for Roman advocacy is most clearly reflected in the continued use of the word *patronus* to refer to the Roman advocate in formal prose.

The case of Norbanus

Cicero relates an example of this type of patronage in *De Oratore*. He tells that the orator Marcus Antonius, who had triumphed over the Cilician pirates in 100 B.C. and had been consul in 99 B.C., defended Gaius Norbanus in the 90s B.C. against the charge of *maiestas* (treason or failure in public duty) for having supported the populist tribune, Lucius Appuleius Saturninus. Norbanus had served as quaestor under Antonius in his command against the pirates in 101 B.C. Antonius mentions this tie at the very opening of his speech and it allows him to justify his choice to defend Norbanus, pleading that 'I was fighting for my companion who by ancestral tradition ought to stand in the relationship of a son to me, and at the same time almost

for my own whole fame and fortune.'

Since Norbanus had served under Antonius the advocate could make the claim that he owed a duty to defend him as a father might a son. This established the advocate in a dominant relationship with his client and presented Antonius with the opportunity to produce his own record for the court on his client's behalf, since by impressing the jurors with his own achievements in the service of the state he might hope to shape their thinking. This influence could have taken one or both of two forms: first, Antonius might have hoped that the jury would think that an advocate who had done so much for Rome would never have a client who might be found guilty of stirring up violence to the detriment of the state; secondly, that they would see that, irrespective of the question of guilt, the state owed a debt of gratitude to Antonius himself.

Turning professional: defending Cluentius

Cicero himself never rivalled Antonius' military achievements and could therefore never deploy precisely the same arguments on behalf of his clients. In any case, the legal world in which Cicero was operating had evolved rapidly from even that of the 90s. Of all the known cases which Cicero pleaded before 64 B.C. he seems to have undertaken all but two not as the result of any personal ties with the client, but because he was sought out, presumably as an up-and-coming talent.

In defending Cluentius in 66 B.C. Cicero mentions two brothers, the Caepasii, who, like Cicero himself, became senators on the back of what seems to have amounted to a career at the Bar, offering their services to any man who applied for their help. He describes these as 'industrious men, who believe that they should count any opportunity for speaking as a compliment and an asset.'

Such a system is far removed from that of the traditional *patronus*, even if the name remained the same: the rhetorical skill of advocates and their regular presence in the courts must have revolutionized Roman legal practice. The changes must have offered new opportunities but also new challenges since the whole nature of the advocate's relationship to his client will have needed to be redefined. Indeed, in this period the precise nature of advocacy was constantly being renegotiated and there was no one universally accepted way of playing the role of speaking on behalf of someone who may have been a complete stranger to the advocate before the trial.

Cicero as chameleon: 1) Roscius and the rustic life

At times, such as in his defence of Cluentius, Cicero seems to have adopted the very modern seeming posture of a career advocate whose task was to serve the interests of justice by presenting his client's case in the best possible way, but at others Cicero seems to have played the role of advocate as chameleon, adjusting his own self-representation in order to make himself resemble his client as closely as possible.

Cicero's first criminal case was in 80 B.C. when he defended Sextus Roscius of Ameria against the charge of having murdered

his father. He characterizes Roscius as a simple countryman and Cicero uses this as one of the major planks of his case, arguing that the life of the country which Roscius enjoyed was completely unsuited to the magnitude of the crime of which he stood accused.

Cicero does not pretend that he has exactly the same feelings for the country as his client – he had been too visible a figure around the forum – but he does attempt to evoke a strong emotional sympathy for such a life, recalling the traditional Roman celebration of men such as Atilius Regulus who had been called from their ploughs to serve as consuls. Like these men, Roscius was totally out of place in contemporary Rome, untainted by ambition or greed, a relic of a previous era. Moreover Cicero could use his inexperience at this early stage of his career to draw himself more closely to his client. Indeed, advocate and client are united in facing much greater and more experienced faces. Roscius is surprised and frightened by the sight of the city, let alone the court. Just as his client is faced by the more worldly-wise Titi Roscii, so Cicero is faced by a practised opponent, Erucius. Cicero believes that the latter may have disregarded him: ‘I believe, when he saw what sort of men were sitting in these benches, he wondered whether this one or that one was going to make the defence: about one he did not even have a suspicion, because I have never before spoken in a public trial’.

But this assimilation takes its most striking form in two particularly emotional climaxes where the advocate goes so far as to adopt the first person and speaks as Roscius: ‘You murdered my father, when he had not been proscribed, after he had been killed you entered him on the list of the proscribed, you drove me out of my house by force, you possess my inheritance. What more do you want?’

This is the furthest that an advocate can go in subsuming his own personality under that of the defendant. Here he identifies himself so closely with Roscius that he speaks as Roscius, a feeling enhanced by the absence of any transition marking the change of speaker. But such identification is facilitated because Cicero has been so careful elsewhere in the speech to align his own character closely with that of his client.

2) The poet and the orator

In 62 B.C. Cicero defended the Greek poet, Aulus Licinius Archias, who was being prosecuted on the grounds that he had no legal right to the Roman citizenship he claimed. Cicero’s approach is to claim that Archias deserved such citizenship because his poems are worthy of such a reward. Cicero therefore argues that his own rhetoric has benefited from the study of such poetry as Archias’; as a result his oratorical ability is the visible basis on which he establishes his client’s case to the jury. This enables Cicero to develop a symbiotic relationship between patron and poet: he does not simply say to the court (to put it crudely) that they should find in favour of his client, because he, Cicero, has done so much on behalf of the state, rather he insists that he has been inspired to such deeds by poets like Archias, and by the comforting prospect that the poet is there to make them immortal by commemorating them in verse.

A final instance is his defence of Marcus Caelius Rufus who was prosecuted for violence in 56 B.C. Here Cicero’s task of assimilation was easier since Caelius himself at the age of twenty-five was already an accomplished speaker and active in court. As an established orator himself Cicero demands the preservation for the state of another, younger man in his own mould. But he adopts a particularly light-hearted and theatrical style as he impersonates a series of individuals and quotes regularly from Roman comedies. He is perhaps influenced by Caelius’ own style, and Austin in his commentary hints at this assimilation: ‘Cicero would not simply be speaking *for* Caelius: in a certain sense, he would *be* Caelius, just as a great actor assumes the character of his part.’

This assimilation to suit his clients’ natures and characters did not operate in a crude or mechanical way. He could not simply adopt the persona of his client; rather he established common ground which they both shared, whilst playing down other aspects of his own character. Moreover on occasion he might seek to distance himself from his client in order to add greater weight and independence to his assertions. But for this to be effective and for advocacy to work, Cicero had first to establish a link with his client, a skill ironically that demanded a greater degree of professionalism and versatility than that possessed by the traditional patron he was mimicking.

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